

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

STEVEN FLOYD VOSS,

Plaintiff,

v.

BARBARA CEGAVSKE, *et al.*,

Defendants.

Case No. 3:20-cv-00266-MMD-CLB

ORDER

Plaintiff Steven Floyd Voss, who is in the custody of the Nevada Department of Corrections ("NDOC"), has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis*, a motion requesting a modification of the *in forma pauperis* requirements, and two motions for a preliminary injunction. (ECF Nos. 1-1, 4, 5, 6, 7.) The Court now screens Plaintiff's civil rights complaint pursuant to 28 U.S.C. § 1915A and addresses Plaintiff's motions.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which an incarcerated person seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See *id.* §§ 1915A(b)(1), (2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

1 In addition to the screening requirements under § 1915A, pursuant to the Prison
2 Litigation Reform Act (“PLRA”), a federal court must dismiss an incarcerated person’s
3 claim if “the allegation of poverty is untrue” or if the action “is frivolous or malicious, fails
4 to state a claim on which relief may be granted, or seeks monetary relief against a
5 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). Dismissal of a
6 complaint for failure to state a claim upon which relief can be granted is provided for in
7 Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under
8 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a
9 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend
10 the complaint with directions as to curing its deficiencies, unless it is clear from the face
11 of the complaint that the deficiencies could not be cured by amendment. See *Cato v.*
12 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
14 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to
15 state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in
16 support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d
17 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all
18 allegations of material fact stated in the complaint, and the court construes them in the
19 light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th
20 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than
21 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While
22 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
23 must provide more than mere labels and conclusions. *Bell Atl. Corp. v. Twombly*, 550
24 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
25 insufficient. *Id.*

26 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
27 that, because they are no more than mere conclusions, are not entitled to the assumption
28 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide

1 the framework of a complaint, they must be supported with factual allegations.” *Id.* “When
2 there are well-pleaded factual allegations, a court should assume their veracity and then
3 determine whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining
4 whether a complaint states a plausible claim for relief . . . [is] a context-specific task that
5 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

6 Finally, all or part of a complaint filed by an incarcerated person may therefore be
7 dismissed *sua sponte* if that person’s claims lack an arguable basis either in law or in fact.
8 This includes claims based on legal conclusions that are untenable (*e.g.*, claims against
9 defendants who are immune from suit or claims of infringement of a legal interest which
10 clearly does not exist), as well as claims based on fanciful factual allegations (*e.g.*,
11 fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989);
12 *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

13 **II. SCREENING OF COMPLAINT**

14 In his Complaint, Plaintiff sues multiple defendants for events that took place while
15 Plaintiff was incarcerated at Northern Nevada Correctional Center (“NNCC”). (ECF No.
16 1-1 at 1.) Plaintiff sues Defendants Barbara Cegavske, the State of Nevada, Balaan,
17 Christopher P. Hicks, Perry Russell, and Kathleen Drakulich. (*Id.* at 2-3.) Plaintiff alleges
18 one count and seeks injunctive relief. (*Id.* at 3-8.)

19 The Complaint alleges the following. On November 27, 1996, Plaintiff was
20 convicted of six separate counts. (*Id.* at 5.) Plaintiff appealed his conviction and the
21 postconviction court found that the sentences imposed in each of the six counts was
22 disproportionate. (*Id.* at 5-6.) The postconviction court ordered that Plaintiff be
23 resentenced. (*Id.* at 6.) But Plaintiff was never resentenced, and on October 17, 2017, he
24 filed a petition with the Supreme Court of Nevada asking that his convictions be vacated
25 and that a judgment of acquittal be entered as a result of the failure to resentence him.
26 (*Id.*)

27 The Nevada Court of Appeals issued an order on Plaintiff’s petition, and he
28 attached the order to his Complaint. (*Id.* at 6, 18-20.) The Nevada Court of Appeals denied

1 Plaintiff's request for entry of a judgment of acquittal on the grounds that it had never
2 been determined that Plaintiff's convictions were invalid. (*Id.* at 19.) Instead, the Nevada
3 Court of Appeals ordered that Plaintiff be resentenced on the original convictions. (*Id.* at
4 20.) The Nevada Court of Appeals also noted that Plaintiff had not been subject to illegal
5 restraint due to the failure to resentence him because he was also concurrently serving a
6 sentence of life without the possibility of parole. (*Id.* at 19 n.1.)

7 Plaintiff has already completed his sentence on all six of the counts, and, thus,
8 resentencing at this point will not grant Plaintiff any relief. (*Id.* at 7.) Nonetheless, the state
9 district court has entered an order for resentencing, and that proceeding is currently
10 pending. (*Id.*) Based on these allegations, Plaintiff asserts that Fifth, Sixth, and Fourteenth
11 Amendment rights have been violated, and Plaintiff requests that this Court order that the
12 district court enter a judgment of acquittal rather than resentencing Plaintiff on his six
13 convictions. (*Id.* at 5, 15)

14 Under the *Rooker–Feldman* doctrine, “a federal district court does not have
15 subject matter jurisdiction to hear a direct appeal from the final judgment of a state court.
16 The United States Supreme Court is the only federal court with jurisdiction to hear such
17 an appeal.” *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). Additionally, a federal
18 district court may not decide any issue that is a *de facto* appeal from a judicial decision
19 from a state court or any issue raised in a suit that is “inextricably intertwined” with an
20 issue resolved by a state court in its judicial decision. *Id.* at 1158. “A party disappointed
21 by a decision of a state court may seek reversal of that decision by appealing to a higher
22 state court.” *Id.* at 1155. “A party disappointed by a decision of the highest state court in
23 which a decision may be had may seek reversal of that decision by appealing to the
24 United States Supreme Court.” *Id.* “In neither case may the disappointed party appeal to
25 a federal district court, even if a federal question is present or if there is diversity of
26 citizenship between the parties.” *Id.*

27 Based on the Complaint, Plaintiff has already litigated the question of whether his
28 convictions should be vacated at the Nevada Court of Appeals. As such, it appears that

1 Plaintiff is asking this Court to reach a different conclusion than that already reached by
2 the Nevada state courts and, in effect, to conduct a *de facto* appeal from the Nevada
3 Court of Appeals decision. This Court does not have jurisdiction to reverse the decision
4 reached by the Nevada Court of Appeals. Because Plaintiff is trying to overturn a decision
5 of the Nevada Court of Appeals, he must appeal to the Nevada Supreme Court and then
6 directly to the United States Supreme Court.

7 Furthermore, even if this action were not barred by the *Rooker–Feldman* doctrine,
8 the Court notes that the Supreme Court has held that a prisoner in state custody cannot
9 use a § 1983 action to challenge “the fact or duration of his confinement,” but instead
10 must seek federal habeas corpus relief or the appropriate state relief. *Wilkinson v. Dotson*,
11 544 U.S. 74, 78 (2005); *see also Nettles v. Grounds*, 830 F.3d 922, 927(9th Cir. 2016)
12 (reiterating that the Supreme Court has “long held that habeas is the exclusive vehicle for
13 claims brought by state prisoners that fall within the core of habeas, and such claims may
14 not be brought in a § 1983 action”). In *Wilkinson*, the Supreme Court held that “a state
15 prisoner’s § 1983 action is barred (absent prior invalidation)—no matter the relief sought
16 (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct
17 leading to conviction or internal prison proceedings)—if success in that action would
18 necessarily demonstrate the invalidity of confinement or its duration. *Id.* at 81-82.

19 Plaintiff argues that the order from the Nevada Court of Appeals finding that he
20 had not been properly sentenced satisfies the “prior invalidation” requirement. But Plaintiff
21 does not seek any relief related to his previous improper sentence. Rather, Plaintiff
22 requests that the Court order the state district court to issue a judgment of acquittal. The
23 Nevada Court of Appeals specifically found that a judgment of acquittal was inappropriate.
24 (ECF No. 1-1 at 19.) As such, there is no habeas order finding that Plaintiff is entitled to
25 a judgment of acquittal, and this Court cannot issue such an order.

26 Accordingly, the Complaint is dismissed without prejudice but without leave to
27 amend. As such, the Court dismisses Plaintiff’s application to proceed *in forma pauperis*
28 (ECF No. 5), as well as Plaintiff’s outstanding motions (ECF Nos 4, 6, 7) as moot.

For the foregoing reasons, it is ordered that Plaintiff's application to proceed *in forma pauperis* (ECF No. 5) is denied as moot.

It is further ordered that the Complaint is dismissed in its entirety without prejudice and without leave to amend.

It is further ordered that Plaintiff's outstanding motions (ECF Nos. 4, 6, 7) are denied as moot.

It is further ordered that this Court certifies that any *in forma pauperis* appeal from this Order would not be taken “in good faith” under 28 U.S.C. § 1915(a)(3).

It is further ordered that the Clerk of the Court close this case and enter judgment accordingly.

DATED THIS 24th Day of February 2021.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE